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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	92043516
<b>Party</b>	Defendant Stich, Willi Lorenz Stich, Willi Lorenz 950 Jennings Street Bethlehem, PA 18017
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<b>Date</b>	09/12/2005
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

JZCHAK N. WAJCMAN dba BILL  
LAWRENCE PRODUCTS and BILL  
LAWRENCE GUITAR PICKUPS,

Petitioner,

vs.

WILLI LORENZ STICH a/k/a BILL  
LAWRENCE,

Registrant/Respondent.

) Cancellation No.: 92043516

) Serial Number: 76594437

) Registration Number: 2,303,676

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) **In the matter of Registration No. 2,303,676**

) **Mark: BILL LAWRENCE**

) **Date Registered: December 28, 1999**

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) **REPLY TO OPPOSITION TO**

) **REGISTRANT'S MOTION FOR A**

) **SPECIFIC NEGATIVE AVERMENT**

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1. The caption of JZCHAK WAJCMAN's Petition for Cancellation states that he is suing in the capacity of a fictitious business name, i.e. a dba. The Petitioner's own definition of "Petitioner" is "Jzchak N. Wajcman d/b/a Bill Lawrence Products and Bill Lawrence Guitar Pickups". This definition of "Petitioner" does not include Wajcman's status as an individual. Petition for Cancellation [Petition], p. 1. By the very text of the Petition, Wajcman is not suing as an individual.

1        2. Nowhere in the Petition for Cancellation does WAJCMAN aver that he does business  
2 under the name Bill Lawrence or that he has obtained a valid dba Bill Lawrence Products and  
3 Bill Lawrence Guitar Pickups. Hence, the answer did not address the issue of the validity of  
4 Petitioner's dba, and the defense of lack of capacity was not waived. Due to the lack of  
5 averments and evidence pertaining to the Petitioner's capacity to sue as a dba, and because  
6 WAJCMAN has produced no evidence that he has legally obtained a dba, the specific negative  
7 averments as to Petitioner's lack of capacity to sue must be granted and the Petition for  
8 Cancellation dismissed.

9        3. WAJCMAN could defeat the pending specific negative averments as to his capacity to  
10 sue simply by producing a public record of his valid dba Bill Lawrence Products and Bill  
11 Lawrence Guitar Pickups that demonstrates his compliance with all statutory requirements.  
12 Since the Registrant Bill Lawrence has raised the specific negative averment as to the capacity of  
13 Jzchak N. Wajcman d/b/a Bill Lawrence Products and Bill Lawrence Guitar Pickups to sue after  
14 consulting public records, the Registrant has done all he needs to do. It is now the burden of  
15 Jzchak N. Wajcman to prove that dba Bill Lawrence Products and Bill Lawrence Guitar Pickups  
16 exists and is valid.

17        4. Since the Petitioner has produced no evidence of the validity of dba Bill Lawrence  
18 Products and Bill Lawrence Guitar Pickups in response to the pending motions, the specific  
19 negative averment denying the capacity of the Petitioner to sue under this dba must be granted  
20 and the Petition for Cancellation dismissed. *See Brown v. Music Inc.* (S. Ct. Alaska, 1961), 359  
21 P. 2d 295, 300 (a defendant who wished to raise an issue as to the plaintiff corporation's right to  
22 sue was required to check the public records, determine whether the plaintiff had complied with  
23 the statutory requirements for bringing an action as a corporation in the state, and specifically  
24 allege any failure to comply); *Rosenblatt v. United Air Lines, Inc.* (D.C.N.Y., 1957), 21 F.R.D.  
25 110, 111.

1        5. In his prayer for relief, Petitioner states that “JZCHAK N. WAJCMAN d/b/a BILL  
2 LAWRENCE PRODUCTS and BILL LAWRENCE GUITAR PICKUPS believes that he is or  
3 will be damaged by Registration NO. 2,303,676 and prays that it be cancelled.” Petition, p. 3.  
4 The Petitioner does not assert that he will be injured as an individual, only as someone doing  
5 business under an invalid, non-existent dba. Petition, Prayer, p. 3. Hence, if WAJCMAN insists  
6 that he is suing as an individual, then either the Trademark Trial and Appeal Board lacks  
7 jurisdiction or WAJCMAN lacks standing because JZCHAK N. WAJCMAN has not asserted  
8 that he will suffer harm as an individual.

9        6. The legal identity under California law between the dba and individual owning the dba  
10 does not eliminate the obligations of Mr. Wajcman to be true to his pleadings. Unless in fact Mr.  
11 Wajcman has validly obtained the dbas that he asserts, the dba Bill Lawrence Products and Bill  
12 Lawrence Guitar Pickups is not the same legal entity as the individual Jzchak Wajcman. *See*  
13 *Pinkerton’s Inc. v. Superior Court* (App. 4 Dist. 1996) 57 Cal. Rptr. 2d 356. Once in court,  
14 Wajcman will be an individual without a dba.

15        7. If Mr. Wajcman wants to sue under a dba, then he must have complied with all of the  
16 statutory requirements for obtaining that dba. By asserting that he has the dba Bill Lawrence  
17 Products and Bill Lawrence Guitar Pickups when in fact no such dba exists or has been proven  
18 by the Petitioner to exist, Mr. Wajcman perpetrates fraud on the Patent and Trademark Office  
19 and the Trademark Trial and Appeal Board.

20        8. If Mr. Wajcman wants to sue in his capacity as an individual, he should make it clear in  
21 the caption, the pleadings, allegations, and prayer that he is suing as an individual. Obviously, it  
22 is to Mr. Wajcman’s advantage to sue under the dba “BILL LAWRENCE PRODUCTS and  
23 BILL LAWRENCE GUITAR PICKUPS” because it creates the impression that he is doing  
24 business legally under the name Bill Lawrence and that WAJCMAN has a going business in  
25

1 good standing with the necessary licenses. Such impressions would tend to favorably dispose  
2 the decider of facts towards Mr. Wajcman.

3 9. However, this is a false conclusion if in fact Mr. Wajcman does not have a legally valid  
4 dba for Bill Lawrence Products or Bill Lawrence Guitar Pickups. If Mr. Wajcman does not have  
5 the dbas that he asserts, then for the purposes of that dba, he is in fact a legal non-entity because  
6 he is not doing business under the name Bill Lawrence and has no legal capacity for doing  
7 business under the name Bill Lawrence. By pleading the non-existent or unproven dba Bill  
8 Lawrence Products and Bill Lawrence Guitar Pickups, WAJCMAN tries to mislead the  
9 Registrant Bill Lawrence, the Patent and Trademark Office, and the Trademark Trial and Appeal  
10 Board by creating the false impression that he is using the mark Bill Lawrence in business and  
11 commerce legally.

12 10. Moreover, if Mr. Wajcman does not have a valid dba for doing business under the name  
13 Bill Lawrence, then he is violating California law and public policy because he is doing business  
14 under a name not contained in his surname. California law requires that everyone doing business  
15 under a name other than his surname have a valid dba. California **Business and Professions**  
16 **Code**, Section 17900 *et seq.* The fact that the parties are in court before a federal administrative  
17 body does not negate the requirements of California law, i.e. there is no federal business law  
18 regarding dbas or fictitious business names. It would be odd indeed if Mr. Wajcman's illegal  
19 conduct in doing business under a name not his surname, without a valid dba and without the  
20 required business licenses, would be prohibited by California state courts but condoned by a  
21 federal administrative body.

22 11. The Petitioner Wajcman cannot avoid the consequences of his failure to comply with  
23 California law regarding dbas by filing this Petition for Cancellation. To hold that simply by  
24 coming before the Trademark Trial and Appeal Board that the provisions of California state law  
25 and the **Business and Professions Code** don't apply would be a severe infringement on states'

1 rights. The Supremacy Clause was not meant to supersede state laws just because there might be  
2 a pendant federal issue such as a federal trademark law. Congress has not preempted  
3 California's **Business and Professions Code** because it has not passed and adopted a federal  
4 scheme for fictitious business names.

5 12. Mr. Kopelowitz complains that there has not been enough meeting and conferring  
6 regarding the pending motions for summary judgment and specific negative averments.  
7 However, the motions for summary judgment and specific negative averments are based solely  
8 on information available through public records, or, in this case, the lack of information in public  
9 records that show that Mr. Wajcman has any valid dba at all. It was only after a long and  
10 expensive investigation that Mr. Lawrence recognized that there was no evidence in the public  
11 records supporting Mr. Wajcman's claims of having legally obtained the dba "Bill Lawrence  
12 Products and Bill Lawrence Guitar Pickups" or any other license to do legal business.

13 13. Wajcman could defeat these motions by merely producing proof that the dbas that  
14 WAJCMAN pled are legally valid. Under FRCP 9(c), it is not the burden of the party making  
15 the specific negative averment as to capacity to sue to prove the adversary's actual lack of  
16 capacity. Rather, once the specific negative averment has been made, it is the burden of Mr.  
17 Wajcman and Mr. Kopelowitz to prove the Petitioner's actual capacity to sue as a dba. *See*  
18 *Brown v. Music Inc.* (S. Ct. Alaska, 1961), 359 P. 2d 295, 300; *Rosenblatt v. United Air Lines,*  
19 *Inc.* (D.C.N.Y., 1957), 21 F.R.D. 110, 111 ("The applicable law is equally available to both  
20 parties and whether the procedural steps necessary to comply with that law had been taken would  
21 seem to be more readily known to the plaintiff than to the pleader.") By refusing to provide  
22 proof of valid dbas, the Petitioner tries to continuously mislead the Trademark Trial and Appeal  
23 Board.

24 14. The time for making a specific negative averment arises when the facts and  
25 circumstances justifying a motion under FRCP 9(c) arise. It was only after conducting a due

1 diligence inquiry as to the existence of dba Bill Lawrence Products and Bill Lawrence Guitar  
2 Pickups during discovery that evidence for that dba's validity failed to materialize. The fact that  
3 this inquiry proceeded even after an answer was filed does not make the motion for specific  
4 negative averment as to Petitioner's lack of capacity to sue untimely because the negative  
5 averment was raised as soon as the Registrant could state, with reasonable certainty based on his  
6 own due diligence investigation that Mr. Wajcman's asserted dbas don't exist and are not legally  
7 valid.

8 15. There is no support for Mr. Kopelowitz's assertion that "Registrant knew or should have  
9 known of the facts upon which he bases his Motion at the time he filed his answer." In the  
10 Petition for Cancellation, Wajcman does not aver that he complied with the statutory  
11 requirements for obtaining a dba. Hence, Mr. Lawrence is entitled to have a reasonable  
12 opportunity to investigate Mr. Wajcman's dbas even after his answer is filed. It would be most  
13 unreasonable to now allow Mr. Wajcman to sue under a dba that he does not legally have, yet  
14 require the Respondent Mr. Lawrence to know that Wajcman's dba is invalid before filing an  
15 answer.

16 16. The transactions alleged by Mr. Wajcman in his Petition for Cancellation and in his  
17 Opposition could not have occurred as described by Wajcman because his pleadings indicate that  
18 dba Bill Lawrence Products and Bill Lawrence Guitar Pickups is owned by himself as an  
19 individual, not as a corporation. Hence, the motions for specific negative averments are not  
20 moot because even if these transactions took place as alleged, without a valid dba under  
21 California law Mr. Wajcman would be precluded from suing or maintaining any action related to  
22 contracts and transactions using dba Bill Lawrence Products and Bill Lawrence Guitar Pickups.  
23 Without a valid dba, the Trademark Trial and Appeal Board has no jurisdiction. Objections to  
24 jurisdiction are never waived and may be made at any time.

1 17. Clarity as to the capacity in which WAJCMAN sues is necessary because the Registrant  
2 may have to assert counter-claims. However, if WAJCMAN sues only in the capacity of an  
3 individual with a dba, but he also alleges transactions between himself and among corporations,  
4 then the Registrant Mr. Lawrence will be able to assert counter-claims against WAJCMAN in  
5 another capacity or against these corporations.

6 18. Registrant has done more than merely deny “knowledge of plaintiffs’ capacity” because  
7 Mr. Lawrence asserts that Mr. Wajcman dba Bill Lawrence Products and Bill Lawrence Guitar  
8 Pickups does not exist and hence Mr. Wajcman has no capacity to sue under this dba. *Plumbers*  
9 *Local Union No. 519 v. Service Plumbing Co.* (1975, SD Fla) 401 F. Supp. 1008 does not  
10 preclude Mr. Lawrence’s specific negative averments because in that case the defendant “merely  
11 denied knowledge of plaintiffs’ capacity to sue.” Opposition at 5.

12 19. Registrant has also made more than a general denial of Mr. Wajcman’s authority to sue.  
13 If Mr. Wajcman does have a legally valid dba Bill Lawrence Products and Bill Lawrence Guitar  
14 Pickups, then obviously Mr. Wajcman has the authority to sue under this dba. However, if Mr.  
15 Wajcman does not have such a dba, then the motions for specific negative averments must be  
16 granted and this Petition for Cancellation denied because Mr. Lawrence has asserted specifically  
17 that Mr. Wajcman has no capacity to sue under a dba Bill Lawrence Products and Bill Lawrence  
18 Guitar Pickups.

19 20. Mr. Kopelowitz lists seven (7) transactions to justify Mr. Wajcman’s capacity to sue  
20 despite offering no evidence that dba Bill Lawrence Products and Bill Lawrence Guitar Pickups  
21 exists. What Mr. Kopelowitz does not explain is why Mr. Wajcman is suing under dba Bill  
22 Lawrence Products and Bill Lawrence Guitar Pickups if none “of the above agreements were  
23 entered into by petitioner’s allegedly invalid d/b/as.” Opposition at 9. If these seven  
24 transactions are important, then the parties to these transactions must be made parties to this  
25 Petition for Cancellation since Mr. Wajcman is a key player in each of them.

21. Just as Mr. Wajcman and Mr. Kopelowitz are glossing over the statutory requirements for obtaining a valid dba, they ignore the important distinctions between corporate capacity and individual capacity. Just as they are trying to throw in dba Bill Lawrence Products and Bill Lawrence Guitar Pickups to make a false impression that Mr. Wajcman has been doing business legally under the Bill Lawrence name, they are now trying to use a false dba to improperly cover corporate transactions.

## Conclusion

22. The Board should Grant Registrant's Motion to Make a Specific Negative Averments under FRCP 9(a) Regarding Petitioner's Lack of Capacity to Sue because the Petitioner Wajcman has failed to offer any proof that the dba Bill Lawrence Products and Bill Lawrence Guitar Pickups is valid or exists. Without a legally valid dba, the Mr. Wajcman could not have acquired and retained any of the rights to the mark Bill Lawrence alleged in his Petition for Cancellation.

23. Mr. Wajcman must have a valid dba in order to do business under the Lawrence name, otherwise he has violated California law and public policy, as well as perpetrated fraud on the Trademark Trial and Appeal Board and on consumers throughout the United States.

Date: September 9, 2005

Respectfully submitted by:  
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**REPLY TO OPPOSITION TO REGISTRANT'S MOTION FOR A SPECIFIC  
NEGATIVE AVERMENT UNDER FRCP 9(C)**

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**REPLY TO OPPOSITION TO REGISTRANT'S MOTION FOR A SPECIFIC NEGATIVE AVERMENT UNDER FRCP 9(C)**